

ARTICLE APPEARED
ON PAGE A-18WASHINGTON POST
19 December 1984

Appeals Court Allows Secret Information in Spy Case Defense

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A federal appeals court has ruled that classified information may be used as evidence in the espionage trial of former intelligence officer Richard Craig Smith, a decision that could bring the case to trial in Alexandria early next year after a five-month postponement.

Smith was accused in April of "selling the identities of six U.S. double agents to the Soviet Union for \$11,000. Smith, 40, who maintains his innocence of the charge, said in pretrial hearings in August that he was working secretly for the CIA.

At the time, he sought to present certain classified information as evidence.

The 4th U.S. Circuit Court of Appeals, in an opinion released yesterday, rejected the government's contention that the need to protect national security outweighs Smith's need to use the classified information for his defense.

U.S. District Court Judge Richard L. Williams ruled in August that Smith would be allowed to introduce some classified information as evidence in his defense during his trial. It was that ruling that the three-member appeals panel upheld this week in a 14-page opinion.

Defense attorney William B. Cummings said yesterday that the ruling will allow Smith the use of "critical" information and could lead to a trial in February, if the government does not extend the appeal process. Yesterday, Assistant U.S. Attorney Joseph Aronica said the government is considering what its next action should be.

The appeals court ruling noted that the government had not explained why the information was classified or how its disclosure would threaten national security. "Without this information, the court was 'ill-equipped' . . . to balance

the harm to the national security against the relevance of the evidence," the judges wrote.

Aronica said the government is considering whether it will seek more pretrial hearings in the case to allow the government to outline the "seriousness" of the classified information. "It was not appropriate to do so [in the initial appeal]. We are now at the stage where it is appropriate," Aronica said.

The classified material that would be allowed into evidence under the court rulings includes information involving a now-defunct Honolulu investment firm that Smith said he used to reach CIA contacts.

The CIA has acknowledged that it had "a slight involvement" with the firm, Bishop, Baldwin, Dillingham & Wong.

"The [classified] evidence tends to negate the criminal intent that the government will be required to prove," Cummings said yesterday.

Smith's trial was originally scheduled for July 9, but it was postponed indefinitely when prosecutors said they needed more time to examine the classified information Smith sought to use. Because of the delays, Smith has been allowed to travel to Washington state, where he lived before his arrest. His lawyer said yesterday that Smith is in Seattle.